SENATE DOCKET, NO. 937 FILED ON: 1/20/2011

SENATE . . . . . No. 808

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas P. Kennedy

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act improving patients' access to timely compensation.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Thomas P. Kennedy	
Richard T. Moore	

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SENATE . . . . . No. 808

By Mr. Kennedy, a petition (accompanied by bill, Senate, No. 808) of Thomas P. Kennedy and Richard T. Moore for legislation to regulate the period of time for the commencement of actions against providers of health care. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *1332* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act improving patients' access to timely compensation.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1.

Chapter 231 of the General Laws is hereby amended by adding after section 60K appearing in the 2010 official edition the following new section:

Section 60L.

(a). Except as provided in this section a person shall not commence an action against a provider of health care as defined in paragraph 7 of section 60 B of chapter 231 as appearing in the 2004 official edition of the general laws unless the person has given the health care provider written notice under this section of not less than 182 days notice before the action is commenced.

9 (b). The notice of intent to file a claim required under (a) shall be mailed to the last
10 known professional business address or residential address of the health care provider who is the
11 subject of the claim.

12 (c). The 182 day notice period in Section 1 is shortened to 91 days if all of the following
13 conditions exist:

14 (1) The claimant has previously filed the 182 day notice required in (a) against another
15 health care provider involved in the claim.

16 (2) The 182 day notice period has expired as to the health care providers described in
17 (1).

18 (3) The claimant has filed a complaint and commenced an action alleging medical
19 malpractice against one or more of the health care providers described in subsection (1).

20 (4) The claimant did not identify and could not have reasonably have identified a health
21 care provider to which notice must be sent under (a) as a potential party to the action before
22 filing the complaint.

23 (d) The notice given to a health care provider under this section shall contain a statement
24 of at least all of the following:

25 (1) The factual basis for the claim.

26 (2) The applicable standard of care alleged by the claimant.

27 (3) The manner in which it is claimed that the applicable standard of care was breached
28 by the health care provider.

29 (4) The alleged action that should have been taken to achieve compliance with the alleged
30 standard of care.

31 (5) The manner in which it is alleged the breach of the standard of care was the proximate
32 cause of the injury claimed in the notice.

33 (6) The names of all health care providers the claimant is notifying under this section in
34 relation to the claim.

35 (e). 56 days after giving notice under this section, the claimant shall allow the health care
36 provider receiving the notice access to all of the medical records related to the claim that are in
37 the claimant's control, and shall furnish release for any medical records related to the claim that
38 are not in the claimant's control, but of which the claimant has knowledge. This subsection does
39 not restrict a health care provider receiving notice under this section from communicating with
40 other health care providers and acquiring medical records as permitted under any other provision
41 of law. This subsection does not restrict a patient's right of access to his or her medical records
42 under any other provision of law.

43 Within 154 days after receipt of notice under this section, the health care provider against
44 whom the claim is made shall furnish to the claimant or his or her authorized representative a
45 written response that contains a statement of each of the following:

46 (1) The factual basis for the defense to the claim.

47 (2) The standard of care that the health care provider claims to be applicable to the action
48 and that the health care provider complied with that standard.

49 (3) The manner in which it is claimed by the health care provider that there was
50 compliance with the applicable standard of care.

51 (4) The manner in which the health care provider contends that the alleged negligence of
52 the health care provider was not the proximate cause of the claimant's alleged injury or alleged
53 damage.

54 (f). If the claimant does not receive the written response required under Section 7 within
55 the required 154 day time period, the claimant may commence an action alleging medical
56 malpractice upon the expiration of the 154 day period.

57 (g) If at any time during the applicable notice period under this section a health care
58 provider receiving notice under this section informs the claimant in writing that the health care
59 provider does not intend to settle the claim s within the applicable notice period, the claimant
60 may commence an action alleging medical malpractice against the health care provider, so long
61 as the claim is not barred by the statue of limitations.

62 SECTION 2.

63 The General Laws are herby amended by inserting after section 79K of chapter 233 as
64 appearing in the 2010 official edition,the following new section:

65 Section 79L

66 As used in this section the following terms shall have the following meaning:

67 (1)"Health Care Provider", means any of the following heath care professionals licensed
68 pursuant to chapter 112: a physician, podiatrist, physical therapist, occupational therapist, dentist,
69 optometrist, nurse, nurse practitioner, chiropractor, psychologist, independent clinical social

70 worker, speech-language pathologist, audiologist, marriage and family therapist and a mental
71 health counselor. The term shall also include any corporation, professional corporation,
72 partnership, limited liability company, limited liability partnership, authority, or other entity
73 comprised of such health care providers.

74 "Facility", a hospital, clinic or nursing home licensed pursuant to chapter 111 or a home
75 health agency. The term shall also include any corporation, professional corporation,
76 partnership, limited liability company, limited liability partnership, authority, or other entity
77 comprised of such facilities.

78 "Unanticipated outcome" means the outcome of a medical treatment or procedure,
79 whether or not resulting from an intentional act, that differs from an intended result of such
80 medical treatment or procedure.

81 (2) In any claim, complaint or civil action brought by or on behalf of a patient allegedly
82 experiencing an unanticipated outcome of medical care, any and all statements, affirmations,
83 gestures, activities or conduct expressing benevolence, regret, apology, sympathy,
84 commiseration, condolence, compassion, mistake, error, or a general sense of concern which are
85 made by a health care provider, facility or an employee or agent of a health care provider or
86 facility, to the patient, a relative of the patient, or a representative of the patient and which relate
87 to the unanticipated outcome shall be inadmissible as evidence in any judicial or administrative
88 proceeding and shall not constitute an admission of liability or an admission against interest.